

01-0676 T.W. v. Dillards Issued: 02/28/02

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Fidelity & Guaranty Insurance ("Fidelity"), the workers compensation insurance carrier for Dillards, asks the Utah Labor Commission to review the Administrative Law Judge's entry of default against Fidelity<sup>1</sup> in the matter of T. W.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **ISSUE PRESENTED**

Fidelity contends the Adjudication Division ("Division") failed to comply with the notice provisions of the Utah Administrative Procedures Act ("UAPA"). Alternatively, Fidelity argues that even if the Division complied with UAPA, good cause exists to set aside Fidelity's default.

### **BACKGROUND AND FINDINGS OF FACT**

The Commission makes the following findings of fact, which are consistent with and supplement the findings of the ALJ.

On July 25, 2001, Ms. W. filed an application for hearing with the Commission's Adjudication Division, seeking workers' compensation benefits for injuries she allegedly suffered in a work-related accident at Dillards on May 5, 2001. Ms. W.'s application listed "ESIS" as Dillards' workers' compensation insurance carrier.

On receipt of Ms. W.'s application for hearing, Division staff searched Commission records to determine the identity of Dillards' workers' compensation insurance carrier. The Commission's records<sup>2</sup> showed Fidelity as Dillards' insurance carrier and also indicated that Fidelity's address of record for notification of claims was the address of Fidelity's parent company, St. Paul Fire & Marine Insurance Co. ("St. Paul"). The Division prepared the usual "request for answer" with Dillards and Fidelity listed as respondents to Ms. W.'s claim. The request for answer was then mailed to both Dillards and Fidelity. As instructed, the Division mailed Fidelity's copy to St. Paul.

The request for answer notified Fidelity of Ms. W.'s claim and specifically advised that Fidelity must file a responsive pleading within 30 days or risk entry of default. No such responsive pleading was filed within the 30 day period. On October 5, 2001, Ms. W. asked the ALJ to enter default against Dillards' and Fidelity. The ALJ did so on October 15, 2001. The ALJ's default order was mailed to both Dillards and Fidelity. Once again, the Division followed Fidelity's instructions and mailed Fidelity's copy of the default order to St. Paul.

On October 18, 2001, ACE USA asked the ALJ to set aside her default order against Fidelity. In support of its request, ACE represented to the ALJ that it was ACE, not Fidelity, that was Dillard's insurance carrier at the time of Ms. W.'s accident and that the request for answer should have been sent to ACE rather than Fidelity. However, in a letter dated October 25, 2001, entitled "clarification of motion to set aside default," ACE retracted its assertion that it was Dillards' insurance carrier. Instead, the October 25 letter confirmed that Fidelity was, in fact, Dillard's insurance carrier. Nothing in the October 25 letter indicates that the Division or Commission had been instructed to mail Fidelity's notices of hearings to an address other than St. Paul.

After ACE and Fidelity had resolved their confusion as to which of them had responsibility for Ms. W.'s claim, it appears that all parties considered the request for relief from default that was originally filed by

ACE as applying to Fidelity. In a decision issued on November 6, 2001, and based on the foregoing facts, the ALJ concluded that Fidelity had not established sufficient justification for relief from its default in this matter. The ALJ therefore denied Fidelity's request that its default be set aside.

## DISCUSSION AND CONCLUSION OF LAW

As noted above, Fidelity contends the Division failed to comply with UAPA's notice provisions. Fidelity also argues that even if the Division complied with UAPA, good cause exists to set aside Fidelity's default. The Commission considers each of these arguments below.

UAPA notice requirements: Fidelity contends the Division's request for answer in this matter must comply with the requirements in subsection (2) of §63-46b-3(2) of UAPA. However, subsection (2), when read in conjunction with subsection (1), apply only to "notice of agency action, **if proceedings are commenced by the agency.**" (Emphasis added.) In this case, proceedings were not commenced by "the agency" (i.e. the Division), but rather, by Ms. W. when she filed her application for hearing. Consequently, the requirements of subsection (2) are inapplicable. Furthermore, even if subsection (2) were applicable, Fidelity has not explained how a technical violation of its requirements would justify Fidelity's failure to file the responsive pleading required by §63-46b-6 of UAPA.

Good cause for relief from default: In the context of this proceeding, §63-46b-6 of UAPA, required Fidelity to file a written response within 30 days of the mailing date of the Division's request for answer. Furthermore, §63-46b-11(1)(c) of UAPA specifically authorized the ALJ to enter an order of default against Fidelity if it failed to file the required response. Thus, the ALJ's entry of default against Fidelity was clearly authorized by UAPA. However, Fidelity contends the Commission should exercise its discretion to set aside Fidelity's default for good cause. Specifically, Fidelity contends that good cause for relief from default exists in this case in the form of mistake, excusable neglect, inadvertence, and/or on the basis of public policy. The Commission finds no merit to this argument

Contrary to Fidelity's suggestion of a clerical mistake in the Division's mailing of its request for answer, it appears the Division followed Fidelity's instructions designating St. Paul as its agent for receipt of mail. After St. Paul received the request for answer, there is no evidence that St. Paul made any effort to contact Fidelity regarding Ms. W.'s claim, or contact the Division for assistance or clarification. Having designated St. Paul as its agent for receiving official documents from the Division, Fidelity must accept responsibility for the consequences of its action. The failure to take any reasonable action to respond to the request for answer goes beyond mere mistake, excusable neglect or inadvertence.

Finally, the Commission recognizes that public policy does favor resolution of claims on their merits rather than on procedural grounds. But at the same time, compliance with the procedures by which parties submit their claims and defenses are necessary to the orderly administration of justice. This is particularly true in workers' compensation claims, which are intended to be resolved quickly so that injured workers can receive medical and wage replacement benefits at the time they need such assistance, rather than months or years later. In light of these important concerns, the Commission concludes that Fidelity should not be relieved of its default.

### **ORDER**

The Commission affirms the decision of the ALJ and denies Fidelity's motion for review. It is so ordered.

Dated this 28<sup>th</sup> day of February, 2002.

R. Lee Ellertson, Commissioner

1. Fidelity's insurance contract with Dillards requires Fidelity to defend and indemnify Dillards from workers' compensation claims. The Commission therefore considers Fidelity as the real party in interest with respect to the issue now before the Commission. This decision refers to Fidelity as respondent

unless context requires otherwise.

2. Section 34A-2-205 of the Utah Workers' Compensation Act requires every insurance carrier writing workers' compensation insurance coverage in Utah to notify the Commission of every policy written. From this information, the Commission determines the insurance carrier liable for workers' compensation claims against specific employers.